

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 91-208-T - ORDER NO. 91-1106 ✓

January 2, 1992

IN RE:	Application of D & R Trucking, Inc.,)	ORDER
	Route 61-L, P.O. Box 364, Harleyville,)	DENYING
	SC 29448, for a Class F Certificate of)	APPLICATION
	Public Convenience and Necessity.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the March 28, 1991, Application of D & R Trucking, Inc. (D & R or the Applicant) for a Class F Certificate of Public Convenience and Necessity¹ authorizing it to transport property as follows:

CEMENT, IN BAGS AND BULK: Between points and places in South Carolina, under contracts with Ford Redi Mix, Inc. and Blue Circle, Inc.

D & R's Application was later amended to read as follows:

CEMENTS, IN BAGS AND BULK: Between points and places in South Carolina, under contract with Blue Circle, Inc.

D & R's Application was filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be

1. "A class F motor carrier is a contract carrier by motor vehicle of property or freight which operates over irregular routes and upon irregular schedules under contract as filed with and approved by the Commission and which does not solicit or receive patronage along such routes." 26 S.C. Regs. 103-115 (Supp. 1990).

published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene were filed by Santee Carriers (Santee), Howard Lisk, Inc. (Lisk), and Southern Bulk Haulers, Inc. (Southern).

A hearing was held at the Offices of the Commission on November 27, 1991. The Honorable Marjorie Amos-Frazier presided. The Applicant was represented by David Popowski, Esquire; Santee was represented by Robert T. Bockman, Esquire; Lisk was represented by William F. Austin, Esquire, and Richard Whitt, Esquire; Southern was represented by Thomas M. Boulware, Esquire; and the Commission Staff was represented by Gayle B. Nichols, Staff Counsel.

After a full consideration of the testimony presented and the applicable law, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. South Carolina Code Ann. §58-23-270 (Supp. 1990) provides as follows:

The Commission may grant a certificate F to any person or corporation who proposes to engage in the business commonly known as contract hauling of freight or property when such applicant does not propose to operate upon a regular schedule or over a regular route or to solicit or receive patronage along the route.

2. 26 S.C. Regs. 103-134(2)(B)(Supp. 1990) provides as follows:

An application for a class F certificate to operate as a contract carrier or an addition thereto may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service; provided, however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application.

(1) to determine whether a carrier is fit, willing, and able, see R.103-134(A)(1).

3. 26 S.C. Regs. 103-134(1)(A)(1)(Supp. 1990) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

(a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT, and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.

(b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying.

The Applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the cost associated therewith.

- (c) WILLING Having met the requirements as to 'fit and able,' the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

4. Derrick J. Risher, Jr. testified on behalf of D & R's Application. Mr. Risher, President of D & R, testified that at the time D & R filed its Application, he owned 51% of the Applicant's stock and John T. Gentry owned the remaining 49% of the Applicant's stock. Mr. Risher testified that within the past month he had purchased Mr. Gentry's interest in D & R and had become D & R's sole shareholder. Mr. Risher explained that he and Mr. Gentry separated their business interests after D & R entered into its contract with Blue Circle, Inc. (Blue Circle).

5. Mr. Risher testified that D & R has a "satisfactory" safety rating from the United States Department of Transportation (USDOT), that there are no outstanding judgments against D & R, and that he was familiar with the Commission's Rules and Regulations Pertaining to Motor Carriers and agreed to comply with the rules and regulations. Mr. Risher testified that D & R carried insurance which met the Commission's Regulations in both type and coverage. Mr. Risher explained that D & R had 16 full time drivers, 16 tractors, 10 flatbed trailers, 7 dump trucks, 18 vans, and one cement trailer.

6. Mr. Risher testified that D & R held two Class E certificates which authorized it to haul commodities in general, with certain restrictions, and building materials and dump truck commodities. Mr. Risher testified D & R also held contract

authority with the Interstate Commerce Commission (ICC).

7. Mr. Risher explained that D & R had been hauling cement in bags for Blue Circle under its certificate authorizing it to transport building materials. He testified that D & R was now seeking authorization to haul tank cement for Blue Circle and that pursuant to the terms of the contract, D & R was guaranteed to haul, at a minimum, one load of tank cement per month. Mr. Risher testified that D & R's sole pneumatic tanker was presently fully utilized to haul tank cement for Blue Circle on an interstate basis. Mr. Risher testified that D & R anticipated hauling more than one load of tank cement per month for Blue Circle and that it intended to purchase additional equipment to accommodate Blue Circle's needs.

8. Mr. Risher testified that the financial exhibits attached to D & R's Application reflected the Applicant's financial condition as of November 30, 1990. The submitted balance sheet indicates that D & R's current assets are valued at \$45,427.67 and that D & R's current liabilities total \$162,561.61. Mr. Risher testified that since the preparation of its balance sheet, D & R had purchased approximately \$375,000 worth of new equipment.² Mr. Risher explained that D & R had financed the purchase of this equipment and that this liability was not reflected on the Applicant's November 30, 1990, balance sheet.

2. Mr. Risher testified that while he had purchased five new trucks and six used dump trailers for approximately \$375,000, four of the trucks and five of the trailers were purchased for D & R.

9. Mr. Risher testified that Mr. Gentry had prepared the tariffs attached to D & R's Application. Mr. Risher explained he could not compare the rates submitted in D & R's tariff with the rates of other carriers. He also testified that Mr. Gentry had told him that the rates in the tariff would allow D & R to make a profit. Mr. Risher stated he did not have an explanation for the stated 5% increase in D & R's rates which would take effect approximately one month after the Application was filed.

10. Mr. Risher testified that at the present time D & R could meet the terms of its contract with Blue Circle.

CONCLUSIONS OF LAW

1. Despite D & R's representation that it is able to meet the terms of its contract with Blue Circle, on the basis of its present Application and the testimony presented at the hearing, the Commission is not convinced that D & R is in fact currently capable of appropriately performing the service it seeks. The Commission concludes that D & R's one pneumatic tanker is insufficient to serve Blue Circle's needs as anticipated by D & R. Moreover, according to the Applicant's financial statement and testimony, the Commission finds that D & R is not in a financial condition to purchase equipment to meet Blue Circle's needs. Finally, the Commission finds that the explanation for the rates submitted in D & R's tariff is insufficient to allow it to conclude that D & R's proposed rates are just and reasonable as required by 26 S. C. Regs. 103-191 (1976).

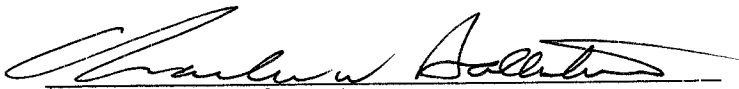
2. Accordingly, the Commission hereby denies D & R's Application for a Class F Certificate of Public Convenience and Necessity.

3. This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED:


Chairman

ATTEST:


Executive Director

(SEAL)